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**NLRB HOLDS THAT EMPLOYEES IN A NONUNIONIZED  
WORKPLACE ARE NOT ENTITLED TO REPRESENTATION  
AT A DISCIPLINARY INTERVIEW**

The National Labor Relations Board has ruled by a 3-2 vote that employees who work in a nonunionized workplace are not entitled under Section 7 of the National Labor Relations Act to have a coworker accompany them to an interview with their employer, even if the affected employee reasonably believes that the interview might result in discipline. *IBM Corp.*, 341 NLRB No. 148. The Board issued the decision on June 9, 2004 and it was made public today. The decision may be found on the Board's website at [www.nlr.gov](http://www.nlr.gov).

The majority, Chairman Robert J. Battista, Member Peter C. Schaumber, and Member Ronald Meisburg overruled *Epilepsy Foundation of Northeast Ohio*, 331 NLRB 676 (2000), which had extended to unrepresented employees a right to have a coworker present during such interviews, and returned to pre-*Epilepsy* Board precedent holding that *Weingarten* rights apply only to unionized employees. Under *NLRB v J. Weingarten*, 420 U.S. 251 (1975), employees represented by a union have the right to have a representative accompany them to a disciplinary interview. Members Wilma B. Liebman and Dennis P. Walsh dissented. Member Schaumber agreed with the majority opinion and had a separate concurrence.

In this case, IBM, whose employees are not represented by a union, denied three employees' requests to have a coworker present during investigatory interviews about a former employee's allegations that they had engaged in harassment. An NLRB administrative law judge, applying *Epilepsy Foundation*, found that IBM violated Section 8(a)(1) of the Act by denying the employees' requests for the presence of a coworker. Upon review, a Board majority reversed *Epilepsy* and therefore reversed the judge.

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